



Custodian of Good Governance

# An Assessment of the State of Professional Ethics in the Limpopo Provincial Government

Public Service Commission

March 2009



## Vision

The Public Service Commission is an independent and impartial body created by the Constitution, 1996, to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corruption-free and responsive to the needs of the people of South Africa.

## Mission

The Public Service Commission aims to promote the constitutionally enshrined democratic principles and values in the Public Service by investigating, monitoring, evaluating, communicating and reporting on public administration. Through research processes, it will ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality services.

# An Assessment of the State of Professional Ethics in the Limpopo Provincial Government



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# Foreword

As the custodian of good governance the Public Service Commission (PSC) prides itself on its work in promoting a high standard of professional ethics in the Public Service. Apart from introducing a range of ethics initiatives such as the Code of Conduct for the Public Service, the Financial Disclosure Framework and the National Anti-Corruption Hotline, it has steadfastly monitored ethical practices within the Public Service in general. This is especially borne out through its annual State of the Public Service reports when on an annual basis it provides a high-level analytical overview of the state of professional ethics. The foundation for providing such an overview is contained in the Constitution which provides that a high standard of professional ethics must be promoted in the Public Service.



The legislation, policies and measures that promote ethics in the Public Service can, however, only be effective if it is implemented with the necessary diligence at departmental level. Flowing from this understanding, the PSC adopted a provincial-specific approach to assess the extent to which provincial departments are promoting professional ethics and integrity. In 2007 the PSC published reports on the assessment of professional ethics in the Free State Provincial Government and in the KwaZulu-Natal Provincial Government. This report provides an assessment of professional ethics in the Limpopo Provincial Government.

The assessment revealed that there are serious shortcomings with regard to the functioning of the Limpopo Provincial Anti-Corruption Forum, the promotion of the Code of Conduct, the implementation of the Financial Disclosure Framework and other anti-corruption legislation. Stemming from the findings contained in this report, recommendations are made that should assist departments in their efforts to ensure effective and efficient administration.

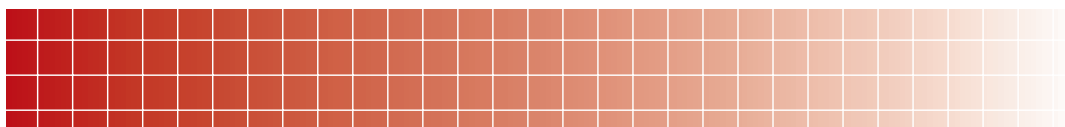
A handwritten signature in black ink, appearing to read 'Sangweni'.

**PROF S.S. SANGWENI**  
**CHAIRPERSON: PUBLIC SERVICE COMMISSION**



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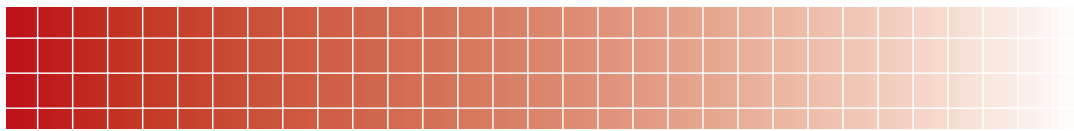
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# Glossary of Abbreviations

COC	Code of Conduct for the Public Service
DSO	Directorate of Special Operations
EA/EAs	Executive Authority/Executive Authorities
DPSA	Department of Public Service and Administration
HSRC	Human Sciences Research Council
HOD/HOD's	Head of Department/Heads of Department
IMU	Integrity Management Unit
LPAF	Limpopo Provincial Anti-Corruption Forum
MACC	Minimum Anti-Corruption Capacity
MEC/MEC's	Member of the Executive Council/Members of the Executive Council
NACF	National Anti-Corruption Forum
NACH	National Anti-Corruption Hotline
NGO's	Non-Governmental Organisations
NIA	National Intelligence Agency
OPSC	Office of the Public Service Commission
OTP	Office of the Premier
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PDA	Protected Disclosures Act
PFMA	Public Finance Management Act
PRECCA	Prevention and Combating of Corruption Act
PACS	Provincial Anti-Corruption Strategy
PSACS	Public Service Anti-Corruption Strategy
PSC	Public Service Commission
PSR	Public Service Regulations
SAPS	South African Police Service
SCM	Supply Chain Management
SMS	Senior Management Service



# Executive Summary

## Introduction

The need to promote professional ethics and integrity applies universally in the Public Service. Recognising that public servants may be susceptible to unethical behaviour government has enacted a comprehensive array of legislation and policy frameworks.

Within this context the Public Service Commission (PSC) has developed a Code of Conduct that guides the professional behaviour and performance of public servants. In order to give effect to the promotion of professional conduct and the co-ordination of anti-corruption strategies in all national and provincial departments, the Public Service Anti-Corruption Strategy (PSACS) was implemented.

The PSC has adopted a provincial specific approach in assessing the extent to which departments are promoting professional ethics and integrity which form part of the requirements of the PSACS. In terms of the relevant provisions of the Constitution and the Public Service Commission Act of 1997, the PSC conducted an assessment of the state of professional ethics in the Limpopo Provincial Government.

## Methodology

A questionnaire encapsulating various issues namely, the promotion of the Code of Conduct, existence of fraud prevention plans, anti-corruption investigating procedures and the implementation of anti-corruption legislation was developed. The questionnaires were forwarded to all Heads of Department under cover of a letter informing them of the PSC's investigation. In addition, interviews were conducted with officials responsible for the promotion of professional ethics and prevention of corruption with a view to obtain clarity on certain aspects of information gathered through the questionnaire. The data obtained through the responses from the questionnaires and information from interviews were analysed and evaluated. This provided a critical analysis of the implementation of the ethics imperatives for the Limpopo Provincial Government.





## ASSESSMENT OF RESULTS

### Assessing the Implementation of the Legislative Framework

Although the majority of departments have implemented the legislative framework, none of the departments has implemented the PAJA which was introduced in 2000.

### Compliance with the Code of Conduct

Whilst all the departments have provided every official with a copy of the Explanatory Manual on the Code of Conduct, not all departments have workshops on and apply the Code of Conduct in disciplinary processes.

### Compliance with the Financial Disclosure Framework

There still exists challenges with the compliance around disclosure and the concern was raised around the quality of information on registrable interests. 94% of the senior managers in the province filed their financial disclosure forms with the PSC.

### Assessing the performance of Anti-Corruption Fora

The LPAF has become inactive of late which has led to a lack of leadership in the Province against the fight of corruption.

### Minimum Anti-Corruption Capacity

Six out of eleven departments have established anti-corruption units with competent staff members at Middle Management positions.

### Assessing the development of Provincial and Departmental Anti-Corruption strategies and fraud prevention plans

Although 82% of the departments have fraud prevention plans, 2 departments namely, Education and Roads and Transport do not have these plans in place.

### Assessing the implementation of Risk Assessments

Eight of the eleven departments conducted risk assessments annually with the exception of three departments namely, Education, Public Works and Roads and Transport.

### Assessing effectiveness of whistle-blowing

Only eight departments have whistle-blowing policies in accordance with the PDA. The departments of Roads and Transport, Local Government and Housing and Sport, Arts and Culture do not have policies in place.



#### Responsiveness to the NACH

There has been a poor response in the feedback of cases referred to departments from the NACH. The PSC received feedback on only 48% of the cases referred to the Province.

#### Investigative procedures

Only five departments have investigative procedures in place. Furthermore, the PSC found that inconsistent training on these procedures has been provided.

#### Assessing Minimum Anti-Corruption Capacity and objectives

Only six departments have established dedicated anti-corruption units with strategic objectives. However, the skills level of most units are inadequate. Junior staff is responsible for these processes.

#### Assessing co-operation with other Anti-Corruption agencies

None of the departments have formal agreements with the agencies except the OTP.

#### Assessing the maintenance of Anti-Corruption databases

Seven of the departments have databases dealing with allegations of anti-corruption. Review of the databases is conducted only after 3 years by the OTP.

### Recommendations

#### Implementation of Legislative Framework

The PSC found that none of the Departments has implemented PAJA in spite of the fact that it was enacted in 2000. The PSC therefore recommends that full compliance with the PDA, PAIA, PRECCA and PFMA by departments that did not develop policies for implementation of these laws should also be addressed as a matter of urgency.

#### Workshops on the Code of Conduct

The PSC recommends that senior managers responsible for anti-corruption include the conducting of workshops and induction programmes on the COC in their performance agreements.

#### Compliance with the Financial Disclosure Framework

As only a 100% compliance rate is acceptable the PSC recommends that departments need to put mechanisms in place to encourage full compliance (by the due date) by all senior managers. Where necessary, disciplinary actions should be instituted against defaulters in accordance with the provisions of the PSR.



### Reviving of the Provincial Anti-Corruption Forum

The inactivity of the LPAF has negatively highlighted weaknesses in the implementation of a holistic anti-corruption approach in the province and may erode any gains made thus far in combating corruption. It is therefore recommended that the OTP takes decisive steps to revive the LPAF in the development of a programme of action.

### Dedicated Anti-Corruption Units with strategic objectives

The PSC found that only six departments of the Limpopo Provincial Government have dedicated anti-corruption units with strategic objectives but that these units are led by middle management. It is therefore recommended that all departments of the Limpopo Provincial Government should have dedicated anti-corruption units and that these units should be managed by a senior manager with clear responsibilities for combating and preventing corruption. In this way departments will assume full responsibility for developing internal investigative capacity which will expedite investigation of cases.

### Full compliance with the PFMA

The lack of compliance with the PFMA by the Departments of Education and Roads and Transport was identified as a worrying factor. Departments do not have fraud prevention plans as required by the PFMA. Of great concern is the continued non-adherence by the Department of Education in this regard in spite of the findings of an M&E study in the Department for the research cycle of 2007/2008. The PSC therefore recommends that departments in the Limpopo Province comply fully with the PFMA especially with regard to conducting regular risk assessments and the regular review of fraud prevention plans.

### Implementation of whistle-blowing policies

The PSC recommends that the Departments of Local Government and Housing, Roads and Transport and Sport, Arts and Culture should immediately implement whistle-blowing policies.

### Responsiveness to the NACH

The PSC is of the view that there is a need to decentralise the investigation capacity in the province and recommends the establishment of dedicated and suitably resourced anti-corruption units to deal effectively with allegations of corruption received from the NACH.





Developing formal cooperation with other Anti-Corruption Agencies

No departments, except the OTP have formal agreements with other law enforcement agencies. The PSC recommends that the development of formal agreements in the province with agencies such as the SAPS and DSO should be pursued in view of the complex nature of corruption as perpetrated by syndicates and organised crime.

Systematic approach to monitoring allegations of corruption

Most departments claimed to have databases on the handling of corruption. The investigation revealed that there is no evidence of such databases. The PSC therefore, recommends that all departments should address this anomaly by ensuring that proper and systematic databases on the monitoring and reporting of corruption are maintained.



# Chapter One

## Introduction



## BACKGROUND

The need to promote professional ethics and integrity applies universally in the Public Service. However, in the case of provincial departments that are at the coal face of service delivery, this need becomes even more evident. Public servants in these departments interact directly with the public and must display high levels of professionalism, honesty, courtesy and integrity.

The interaction between public servants and the public can, however, create opportunities which challenge public servants' resolve to maintain their levels of integrity and honesty. Recognising that public servants may be susceptible to unethical behaviour government has enacted a comprehensive array of legislation and policy frameworks, and created supporting institutions in its endeavours to build integrity and fight corruption both within the Public Service and in society at large. Within this context the Public Service Commission (PSC) has developed a Code of Conduct that guides the conduct of public servants. An example of this, with reference to the relationship with the public reads: "... will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service."

Implementation of the legislation, policies and strategies developed by government and institutions such as the PSC rests with individual departments. In provinces the implementation process is in many instances coordinated by the respective Offices of the Premier which require high levels of coordination and a sound approach to integrated governance.

In order to give effect to promoting the co-ordination of anti-corruption strategies in all national and provincial departments, the Public Service Anti-Corruption Strategy (PSACS) was implemented. In terms of this strategy a minimum anti-corruption capacity had to be established in all departments. The PSC has adopted a provincial specific approach in assessing the extent to which departments are promoting professional ethics and integrity. It has to date embarked on assessments of the State of Professional Ethics in the provincial governments of the Free State<sup>1</sup> and the KwaZulu-Natal<sup>2</sup>. The assessment in these two provinces revealed that there was a need for a coordinated systematic approach in promoting professional ethics and dealing with corruption. Furthermore, the

<sup>1</sup> Republic of South Africa. Public Service Commission. *Assessment of Professional Ethics in the Free State Province, 2007.*

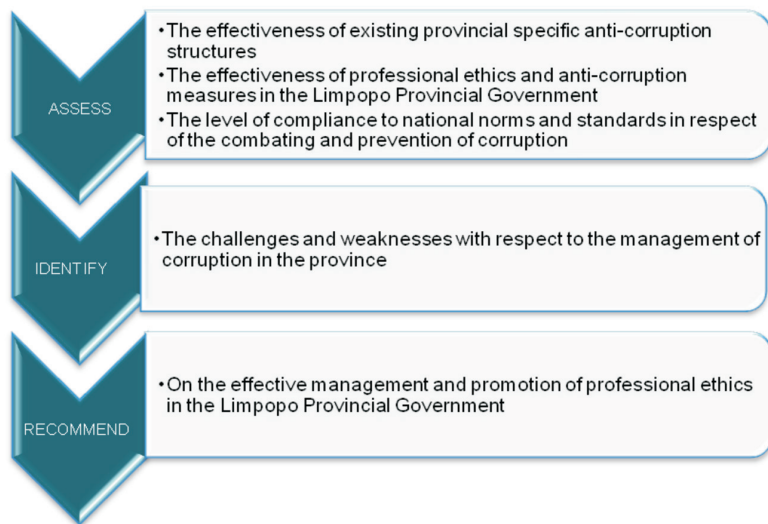
<sup>2</sup> Republic of South Africa. Public Service Commission. *Assessment of Professional Ethics in KwaZulu-Natal Province, 2007.*

prevention and combating of corruption should not be viewed as an end in itself, but as a compulsory means to ensure effective and efficient government to all the citizens in the two provinces.

These results prompted the PSC, during the 2008/2009 financial year, to embark upon an assessment into the state of professional ethics in the provincial government of Limpopo. It is envisaged that the findings and recommendations contained in this report will reinforce good practices and promote the PSACS for the province.

## OBJECTIVES OF THE REPORT

The objectives of the report are as follows:



**MANDATE OF THE PSC** The PSC's mandate is derived from the Constitution, 1996, and the Public Service Commission Act, 1997. In terms of Section 196(4)(b) of the Constitution<sup>3</sup>, read in conjunction with Sections 9 and 10 of the Public Service Commission Act, 1997<sup>4</sup>, the PSC is empowered to investigate, monitor and evaluate the organisation and administration, and personnel practices of the Public Service. Therefore, in terms of the relevant provisions of the Constitution and the Public Service Commission Act, 1997, the PSC conducted an assessment of the state of professional ethics in the Limpopo Provincial Government as part of its mandate to promote professional ethics and investigate and evaluate public administration practices.

<sup>3</sup> Republic of South Africa. The Constitution of the Republic of South Africa. Act 108 of 1996.

<sup>4</sup> Republic of South Africa. Public Service Commission Act. Act 46 of 1997.



## METHODOLOGY

A questionnaire encapsulating various issues namely, the promotion of the Code of Conduct, existence of fraud prevention plans, anti-corruption investigating procedures and the implementation of anti-corruption legislation was developed. The questionnaires were forwarded to all Heads of Department under cover of a letter informing them of the PSC's investigation.

Furthermore, interviews were conducted with officials responsible for the promotion of professional ethics and prevention with a view to obtain clarity on certain aspects of information gathered through the questionnaire.

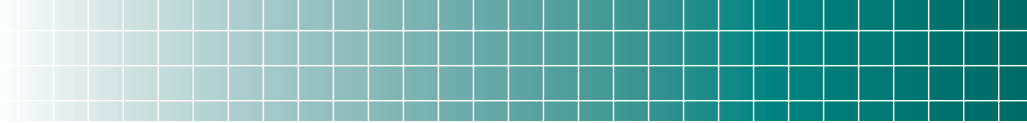
Moreover, as part of the methodology it was decided to conduct a survey on the state of professional ethics in provincial departments which comprised a sample of two officials in each department. Care was also taken to ensure that at least one questionnaire was completed by a senior manager and the other by an official at middle-management level. The survey questionnaire was based on the same issues covered in the questionnaire forwarded earlier to departments and the officials were asked to reflect on their respective departments' implementation of anti-corruption measures and the state of professional ethics in these departments. The officials were guaranteed anonymity to allow them to freely engage with the questionnaire.

However, in spite of the undertaking that officials would remain anonymous, responses were received from only five departments (Economic Development, Environment and Tourism, Health and Social Development, Local Government and Housing, Office of the Premier and Safety, Security and Liaison).

The data obtained through the responses from the questionnaires and information from interviews were analysed and evaluated. This provided a critical analysis of the ethics imperatives for the Limpopo Provincial Government.







### Limitations of the assessment

The following limitations were experienced:

- Officials from only five departments responded to the ethics survey.
- During follow-up with the respective departments for the outstanding questionnaires, it emerged that officials were reluctant to complete the questionnaires. Reasons cited included lack of time and unspecified misgivings about completing the questionnaire.

In spite of these limitations, the PSC is satisfied that it had received sufficient information to make an informed assessment of the state of professional ethics in the provincial government of Limpopo.

### Outline of the report

The structure of this report is made up as follows:

- Chapter 1 provides the introduction and background of the assessment.
- Chapter 2 deals with the relevant ethical imperatives.
- Chapter 3 provides a critical analysis of the ethical imperatives in terms of the Limpopo Provincial Government.
- Chapter 4 contains the recommendations of the assessment.
- Chapter 5 provides the conclusion to the report.

# Chapter Two

## Ethical Imperatives for the Limpopo Province



## Introduction

Any government which is committed to the effective delivery of services needs to provide an ethics infrastructure within which its public servants can function. The South African government has established such an ethics infrastructure. The Code of Conduct for the Public Service, the National Anti-Corruption Hotline and the Financial Disclosure Framework are part of this ethics infrastructure. The ethics infrastructure involves both compliance and aspirational features. This can be seen for example, in the Code of Conduct and the Financial Disclosure Framework which are both compliance based whilst the Public Service Pledge is aspirational in nature. In other words public servants must demonstrate a willingness to comply with norms and standards as well as aspire to achieving maximum efficiency in the delivery of services.

The delivery of services is more prominent at a provincial level and therefore the strategic nature of an ethics infrastructure becomes all the more significant. As the Limpopo Provincial Government is part of the Public Service, they are obligated to operate within this ethics infrastructure. This chapter will briefly focus on the imperatives of this ethics infrastructure. A full discussion and a critical analysis of the compliance standards by the Limpopo Provincial Government will be provided in the ensuing chapter.


## Ethical Imperatives

The creation of a value-driven, transparent and accountable Public Service underscored by professional ethics is dependent on a defined regime of policy, institutional, governance and management structures and processes. It emphasises the importance of a clearly defined structure to determine things like loyalty and commitment, work ethic and risk sensitivity within an organisation<sup>5</sup>.

The following ethical imperatives are currently applicable in the Public Service:

- Implementation of Legislative framework.
- Compliance with the Code of Conduct.
- Compliance with the Financial Disclosure Framework.
- Performance of Anti-Corruption Fora.
- Development of Provincial and Departmental Anti-Corruption strategies.

5 Ramsingh, O and Mahlangu, S: *The significance of laws and Codes for Better administrative procedures and Conduct by Officials: A South African Perspective.*





- Implementation and maintenance of Fraud Prevention Plans.
- Responsiveness to the National Anti-Corruption Hotline.
- Standardised investigative procedures.
- Minimum Anti-Corruption Capacity and Objectives.
- Co-operation with other Anti-Corruption agencies.
- Maintenance of an Anti-Corruption data-base.

Implementation of  
Legislative Framework

Considering that no legislative framework existed prior to 1994, a fairly comprehensive legislative and regulatory framework has been put in place to regulate ethical conduct, promote transparent and accountable government. The ethics imperatives above operate within a legislative and regulatory framework. These are detailed in Table 1 below.

These laws aim to galvanize the fight against corruption through the promotion of transparency and accountability. It often becomes necessary for departments to develop supplementary policies and procedures as a means to enhance the effective implementation of legislation and regulations, especially since these laws may not deal with specific circumstances occurring within departments. Consequently, in addition to assessing the extent to which departments in the Limpopo Province implemented the laws as indicated in **Table I**, the PSC also deemed it necessary to determine whether departments developed applicable policies and manuals to ensure effective implementation of the laws concerned.

**Table I: Legislative and Regulatory Framework**

Matter Discussed	Applicable Legislation/Regulation	Purpose
Public Finance	Public Finance Management Act, Act No. 1 of 1999 <sup>6</sup>	Sets the framework for accountable management of public funds and provides for criminal prosecution of Heads of Department if found guilty of financial negligence, unauthorised, fruitless or wasteful expenditure.

6 Republic of South Africa. Public Finance Management Act, Act No 1 of 1999.

Matter Discussed	Applicable Legislation/Regulation	Purpose
Transparency	The Promotion of Access to Information Act, Act No. 2 of 2000 <sup>7</sup>	Promotes transparency in government as well as the private sector. Strives to move away from a regime of secrecy by making available, through prescribed processes, publicly held information with certain limitations, e.g. Cabinet minutes.
Accountability	The Promotion of Administrative Justice Act, Act No. 3 of 2000 <sup>8</sup>	Promotes fair administrative procedures and redress for citizens. This Act requires government to follow fair procedures when taking decisions that affect the public or an individual. It gives people the right to request written reasons for decisions they disagree with, which allows them to see whether corruption influenced the decision.
Whistle-blowing	The Protected Disclosures Act, Act No. 26 of 2000 <sup>9</sup>	Promotes whistle-blowing as a preventative corruption measure and protects whistle-blowers from "occupational detriment" as a result of blowing the whistle in good faith. The Act is currently being reviewed by the SA Law Reform Commission with the aim of strengthening the provisions of the Act for the protection of whistle-blowers.

<sup>7</sup> Republic of South Africa. *The Promotion of Access to Information Act, Act No 2 of 2000.*

<sup>8</sup> Republic of South Africa. *The Promotion of Administrative Justice Act, Act No 3 of 2000.*

<sup>9</sup> Republic of South Africa. *The Protected Disclosures Act, Act No 26 of 2000.*



Matter Discussed	Applicable Legislation/Regulation	Purpose
Corruption	The Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 <sup>10</sup>	Provides effective legislation to combat corruption in all its forms. Re-introduces the common law act of bribery. Under the Act merely offering to bribe someone whether they accept or not, is corruption.
Financial Misconduct	Treasury Regulation 4.3 <sup>11</sup>	According to the Treasury regulation the incidents and trends of financial misconduct should be monitored by departments and reported to the PSC as well as Treasury. Departments are required to report what they have done to prosecute perpetrators as well as efforts to recover monies stolen as a result of financial misconduct.
Financial Disclosures	Chapter 3 of the Public Service Regulations, 2001 <sup>12</sup>	Chapter 3 of the PSR promotes integrity in the Public Service through the careful management of potential conflicts of interest through financial disclosures. All senior managers in the Public Service must disclose their financial interests to their Executive Authorities, copies of which must be provided to the PSC for scrutiny.

<sup>10</sup> Republic of South Africa. The Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004.

<sup>11</sup> Republic of South Africa. National Treasury Regulation according to which Departments are to report all finalised financial misconduct cases to the Public Service Commission.

<sup>12</sup> Republic of South Africa. Chapter 3 of the Regulations to the Public Service Act, Act No 94 of 1994, as amended.

Matter Discussed	Applicable Legislation/Regulation	Purpose
Anti-Corruption Strategy	Public Service Anti-Corruption Strategy <sup>13</sup>	The Strategy provides a framework for the Public Service through which corruption is addressed in a systematic and co-ordinated manner. The Strategy adopts a three-fold approach of prevention, combating and the creation of awareness of corruption.
Professional Ethics	Code of Conduct for the Public Service <sup>14</sup>	The Code of Conduct and the explanatory manual is a useful guide in the promotion of good governance and ethical conduct of public servants. It promotes honesty and integrity in the workplace.

The full adherence of these imperatives is the basis for a sound ethics infrastructure. However, the test of a successful framework is usually in its application and management. The obligations by the various mechanisms and policies are outlined below.

### Compliance with the Code of Conduct

The PSACS<sup>15</sup> notes that coherent processes and mechanisms to manage professional ethics are key in the fight against corruption. In this regard, codes of ethics lay down the norms and standards of what is acceptable and unacceptable conduct within organisations. Often these codes of ethics are rule-based and enforceable. In terms of the Code of Conduct (COC) applicable to the South African Public Service, norms and standards are clearly laid down to promote integrity and the professional delivery of services to the public. A careful reading of the COC will show that it puts the public interest first subject only to the Constitution. This demands a high level of integrity, honesty and accountability in interacting with citizens. For this reason the thorough implementation of the COC is an imperative for every government department.

<sup>13</sup> South African Public Service Anti-Corruption Strategy, approved by Cabinet, January 2001.

<sup>14</sup> Republic of South Africa. Chapter 2 of the Regulations to the Public Service Act, Act No 94 of 1994, as amended.

<sup>15</sup> South African Public Service Anti-Corruption Strategy, approved by Cabinet, January 2001.



Consequently, Chapter 2 of the Public Service Regulations, 2001 (PSR)<sup>16</sup>, as amended with effect from 1 April 2008, provides for the enforcement of the Code of Conduct (COC) for the Public Service. For public servants the COC is of essential value as a guide for conduct and performance. Departments are obligated to promote the Code, induct staff and deal with transgressions thereof.

### Compliance with the Financial Disclosure Framework

Senior managers in the Public Service are entrusted with public funds and by implication, public trust. As such they need to maintain a high standard of professional ethics. Their integrity and that of their departments must be beyond reproach. Therefore, senior managers should not allow their private interests to be in conflict with official decision-making. It was with this in mind that the Financial Disclosure Framework for senior managers was introduced and regulated in the South African Public Service. The primary focus of the Financial Disclosure Framework is to manage and prevent real conflicts of interest from occurring. The Financial Disclosure Framework has been incorporated as part of Chapter 3 of the Public Service Regulations (PSR)<sup>17</sup>.

In terms of Chapter 3 of the PSR all members of the Senior Management Service (SMS) are required to annually disclose their registrable interests to their Executive Authorities (EA's) with a view to address any conflict of interests relating to their day to day responsibilities that may arise. Regulation C.1 provides that *"every designated employee shall, not later than 30 April of each year, disclose to the relevant executing authority, on the form determined for this purpose by the Commission, particulars of all her or his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question"*.

Newly appointed employees must disclose their registrable interests within 30 days of their assumption of duty. The duly completed financial disclosure forms have to be filed with the PSC by 31 May of each year of assessment. The rate of compliance by senior managers is important, as the consequences of such centers of policy making not complying with the very policy they spear-head is damaging to the ethical image of the Public Service. Non-compliance also does not ease perceptions of conflicts of interest.

16 Republic of South Africa. Code of Conduct for the Public Service, 1997.

17 Republic of South Africa. Chapter 3 of the Regulations to the Public Service Act, Act No 94 of 1994, as amended.





### Performance of Anti-Corruption Fora

Partnering plays a key role in ensuring a holistic approach to preventing and fighting corruption. Therefore, the involvement of business, civil society and labour unions in the Public Service's anti-corruption efforts has been an important formula for the promotion of ethical standards. Since its launch in 2001, the National Anti-Corruption Forum (NACF) has demonstrated the importance of partnerships in championing a collaborative approach in the fight against corruption. The need to replicate this structure at provincial level soon became evident and this was encouraged by the NACF in various meetings.

The advantage of such an approach means that government, business and civil society are united in the prevention and combating of corruption. The direct benefit of this approach may lead to the minimisation of collusion of corrupt practices between unethical business persons and public officials in the province. The effectiveness of a provincial anti-corruption forum is therefore paramount to maintain ethical standards and the perception of an integrity driven Public Service.

### Development of Provincial and Departmental Anti-Corruption strategies

The fight against corruption requires an integrated and sustained effort. The Public Sector Anti-Corruption Strategy (PSACS) has therefore determined that such a holistic and integrated approach be established in every government department. One of the key principles of the PSACS is that there should be public service tailor-made strategies which, while operating independently, should be linked to national strategies of prevention, combating and raising awareness of corruption. This should include detection, investigation and effective prosecution of acts of corruption. As such, a clear strategy informed by wide consultation with provincial stakeholders should be put in place to ensure full co-operation amongst the provincial departments in the Limpopo Province.

### Implementation and maintenance of Fraud Prevention Plans

Risk identification and management strategies serve as instruments of preventing acts of fraud and corruption. In this respect the PFMA provides that departments maintain: "*effective, efficient and transparent systems of financial and risk management and internal control*"<sup>18</sup>. Accordingly departments are required to undertake risk assessments on a regular basis in order to mitigate such identified risks.

18 Republic of South Africa. Public Finance Management Act, Act No 1 of 1999 . Section 38 (1) (i).



Furthermore, the mitigation of these risks should be contained in a fraud prevention plan to address the prevention of any acts of corruption.

#### Effective whistle-blowing mechanisms

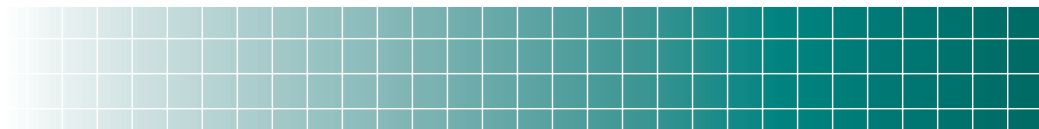
The PSACS requires departments to establish a system or systems that encourage and allow employees and citizens to report corruption. Central to the effectiveness of such a system or systems is recognition of the importance of confidentiality of reporting, accurate recording of allegations and an institutionalised arrangement for pursuing allegations. The Protected Disclosures Act (PDA) protects potential whistle-blowers from “occupational detriment” if they make disclosures on any unethical conduct in good faith. Protection of those wishing to report on suspected corrupt activities should therefore be guaranteed and such guarantees can be provided through an effective policy implementing the PDA.

#### Responsiveness to the National Anti-Corruption Hotline

The NACH was established in September 2004 to provide a safe and an anonymous mechanism for the reporting of corruption in the Public Service. The PSC has been mandated by Cabinet to manage the NACH. Cases received from the NACH are forwarded to provincial and national departments to investigate and report to the PSC. Feedback received from departments is captured on the Case Management System of the PSC to provide callers with progress on investigations. It is therefore expected of the Limpopo Provincial Government to expeditiously handle cases of corruption and provide appropriate feedback to the PSC within a 40 day time span.

#### Investigative procedures

The NACH requires departments to investigate allegations of corruption referred to it by the PSC. In order to do this effectively, standardised investigative procedures should be developed by departments. To assist this process the PSC developed a Toolkit in 2006 as a mechanism to improve responsiveness to the NACH. The toolkit provides detailed guidelines on the development of investigative procedures for departments. The assessment of the anti-corruption units of departments sought to establish the existence of such investigative procedures and whether the relevant officials had received training in these procedures.



### Minimum Anti-Corruption Capacity and Objectives

The PSACS was introduced in 2002 to specifically address corruption in the Public Service. As part of the implementation of the Strategy, Cabinet decided in September 2003 to require all public service departments and entities to have a certain minimum level of anti-corruption capacity. This, *inter alia*, includes the development of departmental anti-corruption strategies; the promotion of professional ethics; the implementation of whistle-blowing mechanisms and the role of managers in the prevention of corruption.

In addition, the PFMA places the responsibility of establishing minimum anti-corruption capacity within departments on the Accounting Officers and such capacity should include an investigating capability for incidents of fraud and corruption, providing mechanisms that encourage reporting of corruption and where necessary, refer allegations to other agencies fighting corruption.

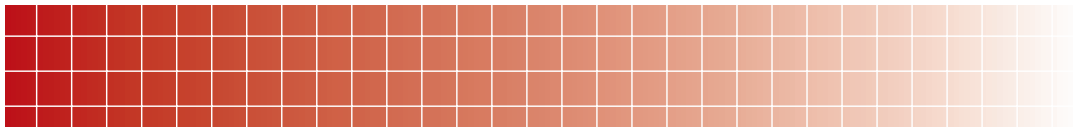
### Cooperation with other Anti-Corruption Agencies

Crime and corruption have become complex issues for departments to deal with because of networks of syndicated and organised crime. This, therefore, demands a specialised response to these threats by departments. For this reason fighting corruption in a holistic and integrated manner may be enhanced through cooperation agreements with specialised anti-corruption agencies of the State. The PSACS requires that the efficacy of existing departments and agencies against corruption be improved through the establishment of appropriate mechanisms to coordinate and integrate anti-corruption work. Accordingly, departments are required to enter into formal agreements with law enforcement agencies and other agencies to address complex cases and where criminal syndicates are involved. This will ensure that corruption related cases which are complex and involve syndicates are not neglected due to a lack of appropriate investigative skills at the provincial level.

### Maintenance of an Anti-Corruption Database

In terms of the effective combating of corruption, departments should keep a database of corruption related cases. This will allow departments to maintain a comprehensive method of keeping track of the cases dealt with as well as allowing for a trend analysis on the nature of the allegations received. Simultaneously, such an approach will at a glance, allow a department to update its





anti-corruption strategy based on the trend analysis pointing to risks so identified as well as allow management the ability to manage the investigations in terms of progress and momentum. This is in fulfillment of the provisions of the Minimum Anti-Corruption Capacity (MACC) Requirements which stipulate that all departments develop such a database<sup>19</sup>.

## Conclusion

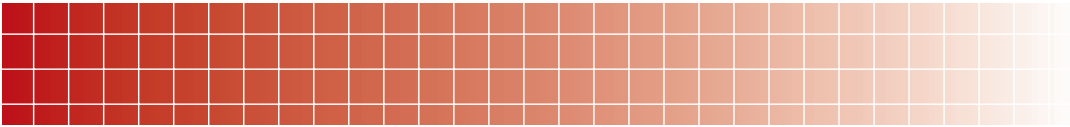
In this chapter the ethical imperatives applicable for the Limpopo Provincial Government were given. The assumption is that these imperatives should form the backbone of upholding ethical values in the province. In order to test the validity of this assumption, the next chapter gives a critical assessment of these imperatives in respect of the Limpopo Province.

<sup>19</sup> Republic of South Africa, Department of Public Service and Administration, *Minimum Anti-Corruption Capacity (MACC) requirements*, Page 83, January 2006.



# Chapter Three

## Critical Assessment of the Ethics Imperatives



### Introduction

As mentioned in earlier chapters, the test of a successful framework is best seen in its application and management. This chapter focuses on a critical assessment of the application of the ethical imperatives in the Limpopo Provincial Government. The performance of the departments in the Limpopo Provincial Government will be discussed against the stated obligations mentioned in the previous chapter. It is therefore important to read this chapter in conjunction with the previous chapter to fully appreciate the standard used.

### Assessing the Implementation of the Legislative Framework

As indicated earlier, a comprehensive array of legislation and policy frameworks have been enacted to combat corruption. These are: Public Finance Management Act, (No. 1) of 1999 (PFMA); The Promotion of Access to Information Act, (No. 2) of 2000 (PAIA); The Promotion of Administrative Justice Act, (No. 3) of 2000 (PAJA); The Protected Disclosure Act, (No. 26) of 2000 (PDA); and The Prevention and Combating of Corruption Activities Act, (No. 12) of 2004 (PRECCA).

In the assessment, the PSC found that the majority of departments have sufficiently implemented the PDA, PAIA, PRECCA and PFMA. However, it was found that none of the departments has implemented the PAJA which implies that the departments are less committed to ensure fairness, justice and impartiality in their decisions.

Table 2 indicates the extent of implementation of the relevant legislation.

**Table 2: Implementation of anti-corruption legislation**

Name of Department	PDA	PAIA	PAJA	PRE-CCA	PFMA
Agriculture	√	√		√	√
Economic Development, Environment and Tourism	√	√		√	√

Name of Department	PDA	PAIA	PAJA	PRE-CCA	PFMA
Education	√				√
Health and Social Development	√	√		√	√
Local Government and Housing	√	√			√
Office of the Premier	√	√			√
Provincial Treasury	√			√	√
Public Works	√	√			√
Roads and Transport					
Safety, Security and Liaison		√		√	√
Sport, Arts and Culture		√		√	√
<b>Total</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>6</b>	<b>10</b>

As reflected in Table 2, the PSC found that eight (8) departments have policies in place on the PDA which translates to 72% of the implementation rate in Limpopo. The Departments of Roads and Transport, Safety, Security and Liaison and Sport, Arts and Culture do not have such policies. While a performance rate of 72% is commendable, the fight against corruption requires a unified effort by all stakeholders to instill a consistent culture of whistle-blowing in the province. This will send an unambiguous message of zero tolerance to corruption.

With regard to PAIA, only three (3) departments (Provincial Treasury, Public Works and Roads and Transport) do not have manuals in place to enable the public to access records under their control. Such non-compliance is cause for concern since the PAIA was introduced in 2000, and not having a manual on the Act is inconsistent with the value of transparency espoused in the Constitution.



It was encouraging to note that of the eight (8) departments that have manuals in terms of PAIA, six (6) Agriculture, Economic Development, Environment and Tourism, Health and Social Development, Local Government and Housing, Office of the Premier and Public Works) have translated their manuals in at least three other official languages, besides English, with two of these being indigenous African languages. The selected languages are predominantly spoken in the Limpopo Province which enhances accessibility of the departments' records to the historically disadvantaged and is a practical way of promoting transparency. The manuals have also been filed with the Human Rights Commission (HRC) in accordance with Section 6 of the Legal Deposit Act, 1997.

In spite of the fact that the PAJA was introduced in 2000, it was disturbing to note that none of the departments in Limpopo had implemented this important piece of legislation. This can only mean that the departments do not see the value of promoting fairness and impartiality in their decisions. This may lead to diminished confidence and trust in their stakeholders who may hold the view that government is not willing to be accountable for the decisions it makes in respect of citizens.

The PRECCA was enacted in 2004 and replaced the old Corruption Act of 1992. Amongst its provisions, it is required of departments to report any act of corruption involving an amount of R100 000 or more to the SAPS for investigation. Six (6) of the eleven (11) departments of the Limpopo Provincial Government have developed policies on fraud and corruption prevention with emphasis on the provisions of PRECCA. This constitutes a compliance rate of 55%. As PRECCA represents the primary legislation against corruption it is unacceptable that all departments have not developed policies in relation thereto. It would be in the interest of erring departments to develop policies in this regard in order to give full effect to this legislation.

Ten (10) departments have delegations in place in accordance with the PFMA. Although the Department of Roads and Transport indicated that it has the necessary delegations in place, evidence of these delegations was not provided despite several requests in this regard. The PSC can only conclude that the Department does not have these delegations. Such non-compliance with the PFMA is cause for concern since the PFMA holds Heads of Department accountable for financial management or mismanagement.





The majority of departments have Supply Chain Management (SCM) policies in place to ensure that access to government bids is open and transparent and in line with good governance.

Although the majority (8 out of 11) of departments indicated that decisive action is taken against officials who violate the PFMA, only the Department of Health and Social Development provided specific finalised cases, with sanctions ranging from demotion to dismissal. Such decisive action indicates the seriousness with which the department regards compliance with norms and standards to enhance professional ethics and should be commended.

Following the survey with a sample of officials, it emerged that few were aware of the extent of implementation of such laws as the PAJA and PRECCA. The majority agreed that PDA, PAIA and PFMA have been adequately implemented in the departments. The responses were therefore consistent with the findings of Table 8, especially with regard to PAJA.

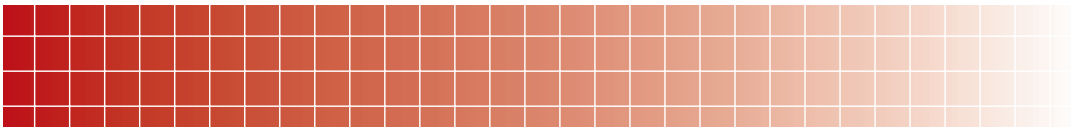
#### Assessing Compliance with the Code of Conduct

In this assessment, the PSC sought to establish the extent of departments' efforts to promote the values and principles espoused in the COC and whether they have incorporated these values and principles in their disciplinary processes.

All the departments (100%) of the Limpopo Provincial Government have provided every official with a copy of the Explanatory Manual on the Code of Conduct for the Public Service. Such an action has the benefit of sending the right message, at the outset, of commitment by the Provincial Government in ensuring an organisational culture whereby professional values and the public interest are strong motivators for professional conduct.

Although all the departments have provided their employees with copies of the Explanatory Manual on the COC, shortcomings were identified in the areas of training and incorporation of the COC in disciplinary processes. In order for employees to be accountable in discharging their responsibilities and duties, it is important that they are made aware of expected standards through proactive communication and training. Conducting workshops





and training on the COC will ensure the understanding of expected conduct amongst employees and therefore encourage an ethical environment. The PSC found that out of 11 departments, five (5) indicated that workshops on the COC are conducted once a year; and one (1) department (i.e. Economic Development, Environment and Tourism) conducted such workshops twice yearly.

The following departments indicated that they did not conduct any workshops on the COC:

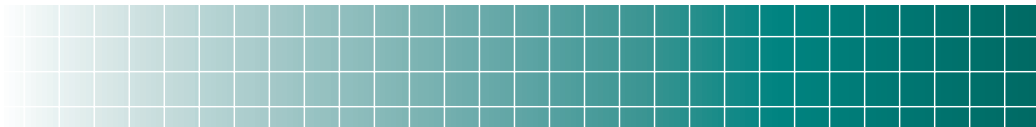
- Agriculture;
- Education;
- Provincial Treasury;
- Health and Social Development; and
- Roads and Transport.

Thus 55% of departments have not conducted workshops at all. This is despite the fact that every year, the PSC distributes the Explanatory Manual on the COC<sup>20</sup> in an effort to encourage departments to regularly run awareness campaigns on the COC.

Apart from the need to re-orientate existing public servants, departments have an obligation to induct new recruits. In the absence of such an approach, newly recruited employees in the departments, who did not participate in workshops on the COC, would not be aware of their expected conduct as espoused in the COC and may therefore use it as an excuse when they are subjected to disciplinary measures as a result of a breach. Induction processes provide appropriate mechanisms through which new recruits can be acquainted with the COC, and therefore elicit their commitment from an early stage to adhere to specified norms and standards.

The creation of ethical awareness among all employees should also be supported by continuous training on the COC. The Limpopo Provincial Government should therefore ensure regular advocacy of the COC, and the five departments that did not conduct workshops should be censured and made to realise the intrinsic value of the COC in enhancing and maintaining an ethical environment.

20 Republic of South Africa, Public Service Commission: *Explanatory Manual on the Code of Conduct*, 2002.



The MACC departs from the premise that criminal prosecution of acts of corruption should not stop disciplinary action from being instituted, and as such, the COC should form an integral part of disciplinary processes. Seven (64%) departments have indicated that the COC is incorporated into the disciplinary processes and that they have used it in disciplinary hearings. Four (36%) departments are not using the COC to discipline officials who contravene its provisions. These findings indicate a worrying trend of uneven implementation of the COC and clearly show that transgressions of the COC are not being consistently dealt with by all departments. This should be corrected if a high degree of consistent ethical behaviour is to be achieved.

#### Assessing Compliance with the Financial Disclosure Framework


Management of conflict of interests is crucial in enhancing the credibility of the Public Service as the custodian of public trust. The PSR requires all senior managers to declare their registrable interest to their respective Executive Authorities and file copies of the duly completed financial disclosure forms with the PSC. Out of 466 senior managers in the province, 440 filed their financial disclosure forms for the 2007/2008 financial year with the PSC as required by the PSR. Although a compliance rate of 94% is commendable, the PSC can only accept 100% compliance given this is a regulatory requirement. The relevant senior managers who failed to comply with the PSR must be called to account and where necessary, appropriate disciplinary action must be taken as required by the PSR.

The following table reflects the extent of compliance across departments:

**Table 3: Level of compliance with the Financial Disclosure Framework for the financial year 2007/2008**

Name of Department	No. of SMS Members	No. of Forms Received	No. of Forms Outstanding
Agriculture	35	32	3
Education	47	46	1
Economic Development, Environment and Tourism	37	37	0





<b>Name of Department</b>	<b>No. of SMS Members</b>	<b>No. of Forms Received</b>	<b>No. of Forms Outstanding</b>
Health and Social Development	91	86	5
Local Government and Housing	46	45	1
Office of the Premier	73	67	6
Provincial Treasury	46	41	5
Public Works	28	25	3
Safety, Security and Liaison	13	13	0
Roads and Transport	38	36	2
Sport, Arts and Culture	12	12	0
<b>TOTAL</b>	<b>466</b>	<b>440</b>	<b>26</b>
<b>TOTAL %</b>	<b>100</b>	<b>94.4</b>	<b>5.6</b>

According to Table 3 the following Departments must be commended for 100% compliance with the submission of the financial disclosure forms:

- Economic Development, Environment and Tourism
- Safety, Security and Liaison
- Sport, Arts and Culture

In addition, the province should also be commended in that all Heads of Department have submitted their disclosure forms. But this should not detract from the fact that some HoD's have failed to ensure that their SMS Members have all submitted their forms timeously. Moreover, the average disclosures for this province (94%) is higher than the country average for all provinces which is at 85%. However, there still exists a challenge with compliance around disclosure based on the following aspects:

- Timely submission by SMS members to EA's;
- HoD's do not regard ensuring compliance by SMS as their re-



sponsibility since the regulations require the SMS members to declare to the EA's; and

- Lack of administrative support for EA's results in delays by EA's in signing and submitting disclosure forms timeously to the PSC.

Respondents of the ethics survey indicated that senior managers are conversant with their obligations regarding the application of the disclosure framework. However, an area of concern was raised around the quality of information on registrable interests and possible lack of full disclosure. For those with registered companies, the extent of their participation in the affairs of such companies should be probed to determine any possible encroachment into official duties. Emanating from this assessment it was suggested that some form of verification needs to be introduced to ensure full disclosure, including the possibility of assessing any disparities between the level of income and the lifestyles of senior managers. A further contribution was the possible extension of the framework to salary levels 6 to 12 in view of the increasing interest in entrepreneurial activity of the officials at these levels.

### Assessing the Performance of Anti- Corruption Fora

Although a formalised structure of the Limpopo Anti-Corruption Forum (LPAF) with representation from stakeholders across all sectors (government, business and civil society) has been established, it has recently not convened. In fact, its last formal meeting took place on 1 November 2007. This raises concerns regarding the coordination and integration of anti-corruption strategies and practices in the province as required in the PSACS. The OTP needs to provide leadership in ensuring the resuscitation of the LPAF by engaging key stakeholders on the leadership of the LPAF and its programme of action. The main reason provided for the inactivity of the LPAF was the unavailability of the MEC for Public Works as Chairperson. The involvement of MECs and members of the Provincial Legislature provide valuable insight on cross-sectoral issues. However, their availability cannot always be guaranteed due to their unpredictable schedules. While the involvement of political heads provides depth and insight in cross-sectoral issues, creative ways should be explored to ensure that their absence does not hamper the operations of the LPAF.





The LPAF is supposed to play a critical role in the coordination of anti-corruption combating endeavors in the province and its inactivity has the potential to undermine any gains made thus far in the province's anti-corruption advocacy. While acknowledging the valuable input of political heads in enhancing the credibility of the LPAF and providing a platform for Government to provide direction in terms of policy, the extent of the involvement of MEC's should be reviewed if the LPAF is to have maximum impact on combating corruption in the province. There is also a need for the LPAF to reconfigure its formation and make provision for a position of Deputy Chairperson, especially when the Chairperson is unavailable. Moreover, the LPAF must urgently consider the rotation of the Chairpersonship to avoid being paralysed as well as to allow for equal participation by the other sectors, especially in view of the fact that the LPAF is an equal partnership.

The majority of respondents during the assessment indicated that they were aware of the existence of the LPAF. However, there was no consensus regarding its effectiveness in addressing issues of corruption in the province indicating that communication on its work was insufficient and that meetings were not regularly convened. It was also stated that despite issues of corruption receiving frequent media attention, similar concerns could not be seen in the LPAF.

#### Assessing the development of Provincial and Departmental Anti-Corruption strategies and Fraud Prevention Plans

Following an assessment of the level of compliance with this PFMA requirement, the PSC found that nine (9) out of 11 departments have fraud prevention plans. This translates to a compliance rate of 82%. The two departments that did not have fraud prevention plans are the Departments of Education and Roads and Transport.

This is in violation of the PFMA. Even more disturbing is the fact that in spite of the findings and recommendation of the PSC's M&E study into the Department of Education for the research cycle 2007/2008 in this regard, the Department has still not developed its fraud prevention plan. This raises questions of accountability and commitment to good governance by the HoD for Education as the Accounting Officer. The absence of fraud prevention plans in the aforementioned departments means that they are not able to anticipate risks of fraud and corruption, and this could expose them to corruption.

Although the compliance rate of 82% is significant and should be encouraged, it is however, important to emphasise the fact that development of fraud prevention plans by departments is a regulatory requirement. The PSC can only accept a compliance rate of 100% in line with the government's commitment to root out corruption as communicated in the PSACS. An illustration is provided in Table 4 below on the existence of plans and whether they were reviewed.

**Table 4: Departments with fraud prevention plans and how often these are reviewed within Departments**

Name of Department	Existence of Fraud Prevention Plan	Plans Reviewed		
		Yes	No	Frequency
Agriculture	Yes	√		Annually
Economic Development, Environment and Tourism	Yes	√		Annually
Education	No		√	
Health and Social Development	Yes	√		Annually
Local Government and Housing	Yes	√		As and when necessary
Office of the Premier	Yes	√		Annually
Provincial Treasury	Yes	√		Annually
Public Works	Yes	√		Annually
Roads and Transport	No		√	

Name of Department	Existence of Fraud Prevention Plan	Plans Reviewed		
		Yes	No	Frequency
Safety, Security and Liaison	Yes	√		Bi-annually
Sport, Arts and Culture	Yes	√		Annually

Also of concern is the lack of a fraud prevention plan for Roads and Transport where tenders are awarded on a regular basis for services required. This also means that employees in this Department are not aware of fraud detection and reporting mechanisms and this may lead to an environment conducive to fraudulent activities. Given this context, such an omission puts the department at great risk and the OTP should take immediate action to remedy the situation.

Although the majority of respondents in the ethics survey were satisfied that the fraud prevention plans in their respective departments were effective in dealing with issues of corruption, it should however, be noted that some departments did not have fraud prevention plans as reflected in Table 4 above. This lack of uniform implementation of fraud prevention and risk management strategies has the potential to undermine the effectiveness of measures to fight corruption in the province.

#### Assessing the Implementation of Risk Assessments

The importance of risk assessments is to identify potential risks that may hamper achievement of objectives. The results of such assessments should form the basis for the development of fraud prevention plans. Risk management therefore involves managing of risks that might prevent achievement of stated objectives in departments. In Table 5 a list of departments that conducted risk assessments is provided.

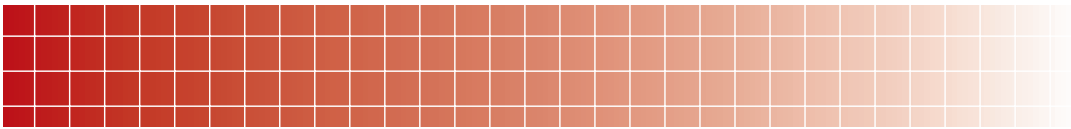


**Table 5: Departments that conducted risk assessments in Limpopo**

Name of Department	Risk Assessment Conducted		
	Yes	No	Frequency
Agriculture	√		Annually
Economic Development, Environment and Tourism	√		Annually
Education		√	
Health and Social Development	√		Annually
Local Government and Housing	√		Annually
Office of the Premier	√		Annually
Provincial Treasury	√		Annually
Public Works		√	
Roads and Transport		√	
Safety, Security and Liaison	√		Annually
Sport, Arts and Culture	√		Annually

From the assessment it was found that out of 11 departments, eight (8) conducted risk assessments on an annual basis and have risk assessment strategies in place. This means that these departments were able to align their risk strategies with new developments and were in a position to manage any identified risk and therefore to adapt their fraud prevention plans accordingly.

The PSC's assessments found that the Departments of Education, Public Works and Roads and Transport did not conduct any risk assessment. It follows therefore that these departments were not in a position to anticipate potential hazards, and are vulnerable to fraud and corruption risks. These departments need to ensure that thorough risk assessments are conducted at least once per annum and fraud prevention strategies are developed through the results of the risk assessments. The Limpopo Provincial Government needs to address this as a matter of urgency as the impression may be created that tax-payers' money is at serious risk and that the relevant departments are indifferent to such risks.



**Assessing the effectiveness of whistle-blowing**

Following the assessment of whistle-blowing mechanisms, the PSC found that out of 11 departments, a total of eight (8) have developed policies on whistle-blowing in accordance with the Protected Disclosure Act, 2000 (Act No 26 of 2000). The policies of these departments generally acknowledge the value of employees in reporting incidents especially since they are close to the processes and therefore they may have access to critical information for successful prosecution of wrong-doers. Clearly, through these policies the departments concerned have created an atmosphere engendering confidence among employees to freely report on any corrupt activities.

Six of the aforementioned departments have indicated that their whistle-blowing policies form part of induction which ensures the internalisation of ethical values and therefore, encouraging reporting of corruption. The Provincial Treasury and the Department of Safety, Security and Liaison indicated that their policies were only communicated to existing staff, but efforts were underway to incorporate them in their induction processes.

The Departments of Local Government and Housing, Roads and Transport, and Sport, Arts and Culture do not have policies encouraging whistle-blowing amongst their employees. This means that employees in these departments cannot rely on the protection of their employers should they wish to report on incidents of corruption. This state of affairs opens these departments to the potential festering of corrupt activities since perpetrators will not be concerned about anyone reporting them. The aforementioned departments must therefore ensure that clear whistle-blowing policies are developed and are also sufficiently communicated to their employees.

**Assessing the Responsiveness to the National Anti-Corruption Hotline (NACH)**

The NACH was established to encourage reporting of allegations of corruption in a manner that ensures privacy and confidentiality. The turnaround time in handling NACH cases in the Limpopo Provincial Government is cause for concern as it will lead to the loss of confidence by complainants and tarnish the integrity of the NACH as an effective corruption combating mechanism.

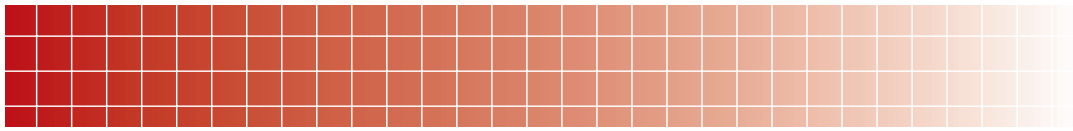
Expeditious handling of cases of corruption and providing appropriate feedback will send an unequivocal message of zero tolerance to corruption. In the assessment, the extent to which departments manage NACH cases was investigated spanning the period 1 September 2004 to 31 March 2008 and this is reflected in Table 6 below.



**Table 6: Statistics on NACH cases referred to departments since the inception of the NACH**

Name of Department	Number of Cases	Feedback Received	Cases Closed
Agriculture	11	9	5
Economic Development, Environment and Tourism	2	1	0
Education	49	18	5
Health and Social Development	49	25	5
Local Government and Housing	41	16	1
Office of the Premier	3	1	0
Provincial Treasury	1	1	0
Public Works	5	2	1
Roads and Transport	33	18	2
Safety, Security and Liaison	8	5	0
Sport, Arts and Culture	2	1	1
<b>Total</b>	<b>204</b>	<b>97</b>	<b>20</b>

Table 6 indicates that there has been a poor response received in the feedback of cases referred to departments in the province. The province's response rate since the inception of the NACH is 21% compared to the overall provincial average of 17%. Education, Health and Social Development, Local Government and Housing and Roads and Transport have high numbers of cases. However, these departments only closed no more than five (5) cases amongst themselves. Such a performance is likely to raise questions from the complainants about the value of the NACH and this may result in the public losing confidence in its integrity, and its ability as a mechanism in the fight against corruption.



The PSC found that most departments, eight (8) out of eleven (11), indicated that corruption cases are prosecuted without fear or favour. There were no examples of such cases recorded in the Annual Report of the OTP for the 2007/2008 financial year. Without such evidence and taking into account the many NACH cases referred to the OTP for investigation, it is a concern that there have not been any finalised cases during the year in question which raises questions about the seriousness and commitment of the province to fight corruption.

#### Assessing Standardised Investigative Procedures

Capacity development includes establishing systems and identifying areas of improvement to ensure a systematic process in investigations. Investigative procedures should therefore set out the *what, how, when* and *by whom* regarding the investigation function and appropriate training on the application thereof should be provided to ensure consistency.

The PSC found that only five departments have investigative procedures that direct how investigations should be conducted. However, the fact that no training on these procedures has been provided raises questions of consistency in their application in investigations which may lead to inconsistent outcomes.

Furthermore, the PSC found out that of the five (5) departments that have investigative procedures, four (4) have indicated that they provided the necessary training to their investigators, namely Economic Development, Environment and Tourism, OTP, Provincial Treasury and Public Works. Scrutiny of information indicated that most departments either conducted workshops on fraud prevention plans/strategies or training with regard to disputes and grievance procedures. In some instances, inconsistencies in the information provided were noted, for example the Department of Safety, Security and Liaison indicated that it provided a refresher course on the investigative procedures, while it originally indicated that it did not develop such procedures thereby contradicting themselves. On the other hand investigating officials of the Department of Agriculture attended external training on investigation procedures, but no evidence of specific training on internal investigative procedures has been provided.

Based on the above it can be concluded that no training of inve-



stigative procedures has been provided to any of the departments. This is a concern because it can be reasonably concluded that investigations are conducted randomly and haphazardly, which may compromise successful prosecution of corruption cases. The provincial government needs to address this gap to respond effectively to corruption as soon as possible as undue delays may continue to leave departments vulnerable in combating corruption.

**Assessing Minimum  
Anti-Corruption Capacity  
and objectives**

Following a Cabinet directive and as emphasised in the PSACS, all departments were required to create a minimum anti-corruption capacity to deal with corruption by July 2004. Accordingly, departments needed to establish dedicated anti-corruption units. However, for these units to be effective they needed to develop strategic objectives to direct their planning in combating corruption.

As indicated in table 7 the PSC found that in the Limpopo Provincial Government only six (6) departments have established dedicated anti-corruption units with strategic objectives.

**Table 7: Departments with dedicated Anti-Corruption  
Units and capability**

Name of Department	Dedicated Units		Number of Staff			
	Yes	No	Competence			
			Newly appointed, still gaining experience	Ad- equate	Highly compe- tent	Total
Agriculture	√				1	1
Economic Development, Environment and Tourism	√			5		5
Education		√	1			1
Health and Social Development		√		8		8



Name of Department	Dedicated Units		Number of Staff			
			Competence			
	Yes	No	Newly appointed, still gaining experience	Ad-equate	Highly competent	Total
Local Government and Housing	√		3		2	5
Office of the Premier	√			2	1	3
Provincial Treasury	√		1	1		2
Public Works	√			1	1	2
Roads and Transport		√			1	1
Safety, Security and Liaison		√	2			2
Sport, Arts and Culture		√	1	2		3

The level of competence of the staff in these units varies from adequately competent to highly competent. The units are led by middle managers. This undoubtedly raises the profiles of the units to a strategic level aiming at rooting out corruption. However, the departments should consider elevating the management of these units to senior management level and include the responsibility of combating corruption in the performance agreements of such senior managers. This approach should be replicated in other departments that have not yet established dedicated units. Amongst other requirements of the PSACS is the need for departments to establish a minimum capacity to fight corruption, which includes the capability to investigate acts of corruption. The PFMA places the responsibility of establishing minimum anti-corruption capacity within departments on the Accounting Officers. Such capacity should include an investigating capability for incidents of fraud and corruption, providing mechanisms that encourage reporting of corruption and where necessary, refer allegations of corruption to other agencies fighting corruption.



The assessment of the minimum anti-corruption capacity in Limpopo included the assessment of the capability within departments to investigate acts of corruption and whether dedicated units have been established to combat corruption. Table 7 indicates departments that have dedicated anti-corruption units and those that do not.

The establishment of anti-corruption structures will not be useful, unless clear strategic objectives supported by an implementation plan are developed to guide their work. Strategic objectives inform proper planning and formulation of processes to ensure a focused approach. Six (6) departments (Agriculture, Economic Development Environment and Tourism, OTP, Provincial Treasury, Public Works and Roads and Transport) that have anti-corruption units have developed strategic objectives for their units.

The MACC has acknowledged that there may be a need for shared service arrangements as informed by the size of the entities and risk profiles. While the Limpopo provincial government arrangement is noted, it however, presents challenges in expediting investigations in that delays may be experienced in referring the incidents for investigation from departments to the OTP.

The results of the ethics survey indicated general consensus on the effectiveness of minimum anti-corruption units in departments. The officials of the Department of Economic Development, Environment and Tourism in particular cited the appointment of former SAPS members as having brought valuable expertise to the area of investigations.

Out of the five (5) departments that did not have dedicated anti-corruption units, three (3) have competent staff to deal with corruption cases. These staff members are located in such components as Security and Investigations and/or Risk Management and as such, their key responsibilities are essentially security provisioning and managing risks. The combating of corruption in this case is an added responsibility. Although the level of competence of these staff members is rated from adequate to highly competent, addressing corruption may not receive the necessary attention due to competing responsibilities. The Departments of Education





and Safety, Security and Liaison are worse off in that their staff members are still “gaining experience”. In this regard the Department of Education has a staff member at a production level and the responsibility of investigating corruption may be overwhelming as some cases may involve complexities above the staff member’s capabilities.

#### Assessing Co-operation with other Anti-Corruption Agencies

The PSC found out that only the OTP has a formal agreement with the SAPS and it has referred some of its cases for which criminal proceedings were preferred, to the SAPS for investigation. The other departments did not enter into formal agreements and this may be attributed to the reliance by departments on the investigation capacity of the OTP due to its transversal role of coordinating all investigations in the province. Whilst decentralising the investigative capacity is ideal, the PSC is aware of how low investigative skills are, and decentralisation at this stage may thin out the capacity even more. However, there must be more emphasis on the recruitment of suitably qualified investigators to meaningfully deal with corruption.

Furthermore, the PSC also found that of the eleven (11) departments in Limpopo, only three (3) departments, namely the OTP, Provincial Treasury and Roads and Transport claimed that they have formal agreements in place with such agencies as the South African Police Service (SAPS), the Directorate of Special Operations (DSO) and the Special Investigating Unit (SIU). However, scrutiny of documentation received indicated that only the OTP has had formal liaison with the SAPS on specific cases which it had referred for investigation.

When probing the case of the Provincial Treasury it was revealed that the department only developed a draft agreement with the SIU and no other cooperation initiatives with other agencies. While the envisaged arrangement with the SIU is notable, the department should implement the agreement and also expand such cooperation to include other bodies namely, the SAPS, the DSO and the National Intelligence Agency (NIA). This will provide it with a range of options relevant to the nature of the corruption allegations when the need so arises.



Assessing the  
Maintenance of  
Anti-Corruption Data-  
Bases

The Department of Safety, Security and Liaison stated to the PSC that the SAPS is, based on its mandate, amenable and accessible for cooperation and such a formal agreement was not necessary. It is possible that these sentiments may be shared by other departments. However, it is important to note that formal agreements with these crime fighting institutions will enable a positive response based on a formal agreement, rather than relying on “sentiment” for cooperation on complex corruption cases. An informal approach puts departments at risk of serious vulnerability when agencies can refuse cooperation in the absence of any formal protocols.

Without proper data recording systems corruption cases and regular review of the effectiveness of the systems may lead to haphazard handling of cases and inappropriate outcomes. Most departments indicated to the PSC that they have databases on handling of allegations of corruption against officials; however evidence of reporting to management on progress was not provided. This raises questions on the effective implementation of the database if no follow-up by management is done.

In its assessment the PSC sought to establish the existence of recording systems or databases in departments on cases of corruption and the use of the same in enhancing an ethical organisational culture. Table 8 provides an illustration of the existence of databases on corruption and reporting to management.

**Table 8: Departments with databases on corruption cases, management reporting and review of systems**

Name of Department	Database Exists		Progress Reporting		Review of System
	Yes	No	Yes	No	
Agriculture	√		√		Yearly
Economic Development, Environment and Tourism	√		√		Yearly
Education		√		√	
Health and Social Development		√		√	

Name of Department	Database Exists		Progress Reporting		Review of System
	Yes	No	Yes	No	
Local Government and Housing		√		√	
Office of the Premier	√		√		Every three years
Provincial Treasury	√		√		Yearly
Public Works	√		√		Not at all
Roads and Transport		√		√	
Safety, Security and Liaison	√		√		Yearly
Sport, Arts and Culture	√		√		Yearly

The PSC found that of all the departments of the Limpopo Provincial Government, seven (7) departments (Agriculture, Economic Development and Tourism, Office of the Premier, Public Works, Safety, Security and Liaison, and Sport, Arts and Culture) have databases for officials who are alleged to have committed corruption. Five (5) of these departments indicated that reporting to management takes place on a monthly basis.

The most common offences included fraudulent claims, demanding/acceptance of bribes, misuse of government vehicles and violation of procurement processes. Table 8 also indicates that five (5) of the seven (7) departments that have databases, review their systems once per annum. The OTP indicated that the review takes place every three years, while the Department of Public Works does not review its system at all. Hence, these departments are at risk since they are unaware what exactly their corruption threats are. It is of further concern that the OTP only reviews its system every three years. The Department of Public Works does not do a review at all. Three years seems an inordinate amount of time before a review is done on something as sensitive as a data-base dealing with corruption cases. The PSC is of the view that the province needs to develop such data-bases urgently where they do not exist and review their continued relevance much more frequently.



The Departments of Health and Social Development, Local Government and Housing and Roads and Transport stated that reporting of cases does take place irrespective of the fact that they do not have formalised and dedicated databases on cases. Since evidence of reports in this regard was not provided, the PSC concluded that no such reporting had taken place.

It was also found that four (4) departments do not have data-bases tracking progress on allegations of corruption reported. These are the departments of Education, Health and Social development, Local Government and Housing and Roads and Transport. Therefore, it will not be possible for these departments to systematically evaluate their risks and consequently adapt their fraud prevention plans.

## Conclusion

While there have been positive developments in the establishment of minimum anti-corruption capacity in the Limpopo Provincial Government, there is still room for improvement to ensure adequate capacity to fight corruption. The revival of the LPAF is critical if a holistic approach required by the PSACS is to be realised. The elevation of anti-corruption units of departments to be managed by senior managers with allocated anti-corruption responsibilities clearly stated in their performance agreements will raise the profiles of these units and enhance their effectiveness in combating corruption. This will also provide an opportunity for meaningful engagement around the need for the decentralisation of the investigation capacity to departments by the OTP which will expedite finalisation of cases and send a strong message of dealing with corruption.



# Chapter Four

## Recommendations



## Introduction

The assessment of Professional Ethics in the Limpopo Provincial Government identified various challenges, weaknesses and omissions as well as positive elements with regard to the ethical imperatives. This chapter aims to stimulate debate in the Province to address the weaknesses and has provided recommendations to assist this process.

## Implementation of Legislative Framework

The PSC found that none of the Departments has implemented PAJA in spite of the fact that it was enacted in 2000. The PSC therefore recommends that full compliance with the PDA, PAIA, PRECCA and PFMA by departments that did not develop policies for implementation of these laws should also be addressed as a matter of urgency.

## Workshops on the Code of Conduct

There is uneven implementation of the COC in that not all departments conduct advocacy and training programmes to instill the ethical values provided in the Code. Moreover, departments do not use the COC in the disciplinary processes, and this is essential as the COC is the basic guide for conduct and performance in the Public Service. The PSC therefore recommends that all departments conduct regular workshops on the COC and also use it in the disciplinary processes. Furthermore, senior managers responsible for anti-corruption should include the conducting of workshops on the COC in their performance agreements.

## Compliance with the Financial Disclosure Framework

The PSC noted that as at 1 December 2008, 94% of the senior managers had submitted their financial disclosure forms. As only a 100% compliance rate is acceptable, the PSC recommends that departments need to put mechanisms in place to encourage full compliance (by the due date) by all senior managers. Where necessary, disciplinary actions should be instituted against defaulters in accordance with the provisions of the PSR.

## Reviving of the Provincial Anti-Corruption Forum

The inactivity of the LPAF has negatively highlighted weaknesses in the implementation of a holistic anti-corruption approach in the province and may erode any gains made thus far in combating corruption. It is therefore recommended that the OTP takes decisive steps to revive the LPAF in the development of a programme of action.



#### Dedicated Anti-Corruption units with strategic objectives

The PSC found that only six departments of the Limpopo Provincial Government have dedicated anti-corruption units with strategic objectives but that these units are led by middle management. It is therefore recommended that all departments of the Limpopo Provincial Government should have dedicated anti-corruption units and that these units should be managed by a senior manager with clear responsibilities for combating and preventing corruption. In this way departments will assume full responsibility for developing internal investigative capacity which will expedite investigation of cases.

#### Full Compliance with the PFMA

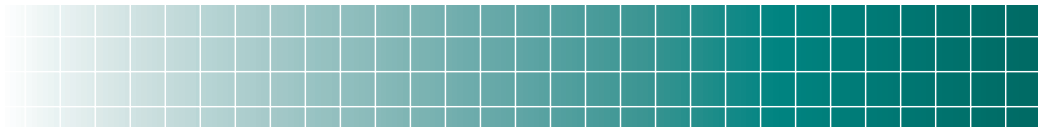
The lack of compliance with the PFMA by the Departments of Education and Roads and Transport was identified as a worrying factor. Departments do not have fraud prevention plans as required by the PFMA. Of great concern is the continued non-adherence by the Department of Education in this regard in spite of the findings of an M&E study in the Department for the research cycle of 2007/2008. The PSC therefore recommends that departments in the Limpopo Province comply fully with the PFMA especially with regard to conducting regular risk assessments and the regular review of fraud prevention plans.

#### Developing Whistle-blowing policies

The PSC found that the Departments of Local Government and Housing, Roads and Transport and Sport, Arts and Culture do not have whistle-blowing policies. These departments should develop whistle-blowing policies in order to protect potential whistle-blowers against any occupational detriment.

#### Timeous Response to NACH cases

The turnaround time in handling NACH cases in Limpopo is cause for concern. Moreover, the province only submitted feedback to the PSC on 48% of the cases that were referred to the province. The Office of the Premier should exercise greater political will in ensuring a much higher level of feedback to the NACH. Moreover, the PSC is of the view that there is a need to decentralise the investigation capacity in the province and recommends the establishment of dedicated and suitably resourced anti-corruption units in departments for the expeditious investigation of cases of corruption referred to the Limpopo Provincial Government.



### Implementation of investigative procedures

The test of the effectiveness of investigative procedures lies in the consistent application thereof to avoid poor outcomes in the investigation of allegations. It is therefore recommended that the application of standardised investigative procedures be implemented especially in the six departments where these do not exist. Furthermore the Toolkit on the NACH 2006 should be used in conjunction with the implementation of investigative procedures.

### Developing formal cooperation with other Anti-Corruption Agencies

No departments, except the OTP have formal agreements with other law enforcement agencies. The PSC recommends that the development of formal agreements in the province with agencies such as the SAPS and DSO should be pursued in view of the complex nature of corruption as perpetrated by syndicates and organised crime.

### Systematic approach to monitoring allegations of corruption

Most departments claimed to have databases on the handling of corruption. The investigation revealed that there is no evidence of such databases. The PSC therefore, recommends that all departments should address this anomaly by ensuring that proper and systematic databases on the monitoring and reporting of corruption are maintained.



# Chapter Five

## Conclusion





## Conclusion

This assessment should be able to address weaknesses identified in the management of professional ethics in the Limpopo Provincial Government. Of particular concern is the lack of investigative capacity and the maintenance of corruption databases in provincial departments. Furthermore, the LPAF's inactivity has also led to a weakening of anti-corruption commitment and strategies in the province. The recommendations contained in this report should therefore assist the provincial government in overcoming the inadequacies that were identified.

The provincial government should use this report as a basis to eliminate the identified weaknesses in order to enhance the application of professional ethics on a more consistent basis in all departments.

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